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C O N F I D E N T I A L SECTION 01 OF 03 BRUSSELS 000119

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DEPARTMENT FOR EUR/ERA (FAUCHER), L-LEI (PROPP), L-EUR  
(OLSON), DS/SI/IS (MASCIANA)

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SUBJECT: FIRST ROUND OF NEGOTIATIONS ON US -EU GENERAL  
SECURITY OF INFORMATION AGREEMENT HELD IN BRUSSELS DECEMBER  
4-7

REF: A. 03 USEU 00555 B. 04 USEU 00516 C. 04 STATE  
034277 D. 05 USEU 02918

Classified By: USEU Pol-Mil Unit Chief Jeremy Brenner for reasons 1.4 (b) and (d)

¶1. (SBU) Summary. The first round of negotiations on a US-EU General Security of Information Agreement took place in Brussels the week of December 4, 2006. The agreement would create a legal framework under which classified information could be exchanged between the US and the European Union. End summary.

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First Round of Negotiations  
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¶2. (C) A U.S. delegation including representatives from State, DoD and other agencies completed the first round of discussions with the EU on a General Security of Information Agreement (GSOIA), December 4-7 in Brussels. The negotiations began with briefings by EU security officials (Commission and Council Secretariat) on EU law and policy on the protection of EU Classified Information. The respective Council and Commission offices of security gave a detailed briefing on the extensive regulations governing access to, and protection of, EU classified information. State's DS/IS made a similar presentation covering U.S. law and policy on the protection and exchange of U.S. classified information. The week-long session also involved inspections of several Council Secretariat and Commission facilities and registries where EU Classified information is handled, including the Council Secretariat's Joint Situation center, an intelligence fusion cell, where information provided by Member State services is synthesized into finished intelligence analysis for senior EU policymakers.

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Limited EU Production of Classified Materials  
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¶3. (C) From the discussions, it became clear that as a by-product of the NATO-EU Security Agreement, the EU has imported whole cloth the NATO Classified Information regime.

This background informed all EU approaches during the subsequent negotiations on the text. The EU's classification system has four tiers: EU Restricted; Confidential; Secret; and Top Secret. Other than "EU Restricted" information, the EU actually produces very few pieces of its own classified information (perhaps in the hundreds on an annual basis). In addition, very few EU staff members actually handle the information that is produced (approximately 200). There is a strict system of access controls, need to know, vetting by Member State agencies, and accountability in place. There is no broadly available desktop classified LAN system such as we have at State, although there are a number of similar systems under development.

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Remaining Areas for Resolution  
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14. (C/NF) Negotiations on the text of the agreement went well and point to likely completion during the first quarter of 2007, possibly in time to be signed prior to the anticipated late-April U.S.-EU Summit in Washington. Following is a summary of the few remaining areas to be resolved:

-- Scope of the Agreement. There was some discussion during the negotiations whether the agreement would apply to all classified information exchanges between the U.S. and EU, as the EU wishes to be the case. The current text does not say "all"; it simply says that it shall apply to classified information provided or exchanged between the Parties, preserving U.S. flexibility on this point. Other Articles

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preserve existing arrangements between the Parties. The EU thus understands that the scope of this Agreement is not all-inclusive. The Agreement would be binding on the USG, the Commission, the Council Secretariat and the Secretary General/High Representative.

-- Equivalence. The EU has a category of classified information called "restreint" (or "EU Restricted") which has no U.S. equivalent but which, if provided to the U.S. under this agreement "shall be protected (in a manner at least equivalent to that afforded to it by the releasing Party)." "Restreint" means "restricted" and under U.S. law and practice would be treated as foreign government confidential information, albeit with modified handling. We must confirm that the proposed text will not present unanticipated problems.

-- Limitation on future agreements. The U.S. pressed the EU to delete a clause stating that this agreement shall not preclude the Parties from concluding other future Agreements relating to the provision of classified information "provided they do not conflict with the provisions of this Agreement". This is standard EU verbiage, and they were surprised by our request to delete. We pointed out that it was restrictive in character, and future U.S. agreements with third countries need not necessarily meet the baseline of a U.S.-EU Agreement.

-- Technical arrangements. The U.S. agreed in principle to a two-tier structure consisting of a binding international agreement and a subsidiary set of security arrangements governing some of the more detailed technical aspects. The EU provided a draft of the latter only at the end of the round which we have not yet reviewed or commented upon. The EU claimed it needed the flexibility of this structure so that the technical detail can be amended over time without the need for iterative approval by the (inter-governmental) EU Council. On the EU side the security arrangements would be entered into by the EU Council and Commission Security Offices. We deferred a decision on who the party to the security arrangements would be for the U.S., and what the

relationship would be between that party and the party to the international agreement itself. The EU does not regard the implementing arrangement as binding as a matter of international law.

-- Implementation. A key issue upon conclusion of the agreement will be coordinating implementation. The EU has a registry system in place at the Commission and Council Secretariat to register and distribute all EU Classified

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information via a series of sub-registries to all those determined to have a need to know. They seek a similar arrangement with the U.S. The USG will have to decide which Agency should have the lead, and whether we should institute a registry system similar to the system DoD instituted for the handling of NATO classified information. If the registry is housed within State, it must be determined who will run this system. In order to conclude this agreement, a decision on our approach will need to be taken prior to the arrival of the EU delegation to conduct its security site survey and negotiate any outstanding questions. The EU has proposed late January or early February for such a visit.

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Background on the US-EU Security Agreement  
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¶5. (C/NF) As part of the development of the European Security and Defense Policy (ESDP) and a European Security Strategy, the EU Council Secretariat was charged in 2003 with negotiating a series of information-sharing agreements with partners and potential partners. The proposal for an agreement whereby the USG and the European Union could share classified information was first made in a letter from EU HR/SG Javier Solana in February 2003 (ref a). Then-Secretary Powell responded that the EU should begin discussions with USEU to consider such an agreement (ref c).

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¶6. (C/NF) The proposal gained momentum in 2004, with S/CRS and the National Intelligence Council seeking to share classified watch and warning lists as part of a consultative process on emerging threats. The EU maintains its own classified watch list and an agreement allowing the exchange of such information was recognized as key to meaningful discussion and policy coordination with respect to failed and failing states and other threats (ref d).

¶7. (C/NF) Additional impetus came from the recognized inability to inject US policy perspectives on particular issues, most notably the China Arms Embargo. In the absence of an agreement allowing access to classified information, it proved very difficult to explain the US rationale for its concerns over developments within the Chinese military. The conclusion of this agreement will permit US views to be injected into EU policy deliberations on a range of issues such as arms sales to Venezuela, developments in DPRK, events in the Middle East - including situational awareness in regions where the EU has deployed personnel, Africa, and others where we share a common policy goal with Europe. We have often found ourselves at a serious disadvantage in policy discussions due to the inability to share sensitive information, and many within the Council Secretariat are equally frustrated by their inability to share with us.

¶8. (C/NF) The proposed agreement will not pertain to the exchange of operational military intelligence, which will continue to be shared via existing NATO-EU channels. It is not envisioned that raw intelligence data will be exchanged through this channel, but rather "finished" analysis, diplomatic reporting and policy papers. Under the proposed agreement, there will be no/no obligation to share classified information by either side. Access to internal EU planning documents - currently not possible - will give US

policymakers greater insight into EU thinking, especially in the area of stabilization and crisis management missions.

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